



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/699,955 10/30/00 BARRY

D 1150/OH262

EXAMINER

QM12/1009

DARBY & DARBY PC
805 THIRD AVENUE
NEW YORK NY 10022

HUNTER, A

ART UNIT

PAPER NUMBER

3711

DATE MAILED:

10/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/699,955

Applicant(s)

BARRY, DENNIS P.

Examiner

Alvin A. Hunter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
 - a) Figures for "Brief Description of the Drawings" are not listed as separate figures, and
 - c) On page 10, line 5, the word "parallelopiped" should read --parallelepiped--.Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, and 6-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry (USPN 4093235) in view of Vogel (USPN 3588144).

Barry discloses, word for word, all of the limitations claimed by the applicant except for a multi-token means disclosed by the applicant in claims 1, 6, and 16, the multi-token being a parallelepiped object, representations on token being the same color, multi-tokens being different colors, and the multi-token being pyramid shaped (See claims 1 through 25). Vogel discloses having playing piece in adjustable indicium on them (See Abstract). On some of the cubical pieces, indicia representing ranking is comprised of one face bearing the letter "Z", a second face bearing the letter "N", and a third face bearing the letter "I" (See Column 2, lines 40 through 55 and Figure 1). Vogel

also discloses that the playing pieces may be polygonal having increased sides for bearing more indicium (See Column 3, lines 54 through 73). Vogel also discloses, in another embodiment, short cylindrical pieces having directional indicia identifying which piece is adjustable by orientation. Though Vogel does not disclose a travel game, the teaching of having more than one indicia on a game piece is clearly taught (Also See Column 1, lines 58 through 65). Vogel also teaches a directional indication means as how to orient the game piece(s) during play. Furthermore, Vogel discloses that the sets of game pieces are distinguished by color (See Column 2, lines 32 through 39).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the three separate tokens disclosed by Barry into one token with three representations as taught by Vogel in order to reduce the number of game pieces. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to modify tokens disclosed by Barry into one token shaped as a parallelepiped or pyramid shaped as taught by Vogel in order to accommodate three representations of tokens disclosed by Barry. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have the three representations on the multi-token the same color and the multi-tokens of different colors as taught by Vogel in order to eliminate confusion of what player is using which multi-token. The applicant discloses "GO" and "NO GO" being printed on the ends of the tokens, which is printed matter and is not patentable. Furthermore, it would have been obvious to one having ordinary skill in the art at the

time the invention was made to provide Barry with directional indicator as taught by Vogel in order to indicate how the token is capable of moving.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

In the argument filed August 1, 2001, the applicant argues that the examiner used hindsight in order to formulate an obvious rejection over his application. The examiner strongly disagrees with the applicant. Anyone having ordinary skill in the art could look at the claims, which have the exact same wording expect for the term "multi-token", of the pending application and U.S. Patent 4093235 and clearly see that the tokens were combined into one token. The applicant clearly discloses, on page 10, lines 16-18, that the directional indicators are optional. It is not critical for playing the game to have a directional indicator. Due to the applicant amending the claims, the above action has been furnished.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A Hunter whose telephone number is 703-306-5693. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman, can be reached on (703) 308-1310. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


JEANETTE CHAPMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700